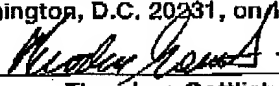


Atty's Docket: 101195-48

**CERTIFICATION OF FACSIMILE TRANSMISSION**

I hereby certify that this correspondence is being transmitted by facsimile to the Assistant Commissioner For Patents, Washington, D.C. 20231, on 13 October 2003.

  
Theodore Gottlieb**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

App. Ser. Nr.	: 09/682719 831083
Applicant(s)	: Ute HEIM et al.,
Filing Date	: 3 May 2001
Art Unit	: 1638
Examiner	: Cynthia E. Collins
Title	: New Expression Cassette for Expression of Arbitrary Genes in Plant Seeds

Commissioner of Patents  
PO BOX 1450  
Alexandria, VA 22313-1450

13 October 2003

**RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

This communication is in response to the office action of 18 July 2003.

Entry of any amendments and consideration of the remarks is respectfully requested.

Atty's Docket: 101195-48

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**CONDITIONAL PETITION FOR EXTENSION OF TIME**

If any extension of time for this response is required, Applicants request that this be considered a petition therefore. Please charge the required fee to Deposit Account No. 14-1263.

**ADDITIONAL FEES**

Please charge any further insufficiency of fees, or credit any excess to Deposit Account No. 14-1263.

**REMARKS**

Claims 1-20 are pending in the application.

It is noted that on 2 September 2003, Examiner was faxed a copy of the previously submitted preliminary amendment that canceled claims 14-18. Proof of said submission was also provided. Thus, it is understood by Applicants that claims 1-13 and 19-20 remain in the application.

**Election With Traverse of the Restriction Requirement**

In response to the restriction requirement, applicants provisionally elect with traverse, GROUP I.

**Comments Supporting Traversal of the Restriction Requirement****Basis for the Alleged Lack of Unity of Invention**

The entire basis for issuing the restriction requirement was predicated on the fact that the SBP promoter is considered by Examiner to be the special technical feature required satisfy the unity of invention standard. PCT 13.2. Further, to qualify as an actual technical feature the SBP must define a contribution over the art.

It is then alleged that Heim et al., or Grimes et al., either anticipate or render obvious the claims because they disclose a promoter from a gene encoding a seed protein similar to sucrose binding protein, SBP. Accordingly, the claims are alleged to not define a contribution over the art, thus, rendering the restriction requirement proper.

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Response to Examiner's Arguments

In response, it is respectfully pointed out that neither Heim nor Grimes anticipate the claims. Neither do they individually or in combination render the claims obvious.

Heim discloses the sequence of a cDNA to sucrose phosphate synthase. A cDNA clone comprises the coding sequences of a gene and/or the mRNA transcribed from the gene. No promoter sequences are disclosed in the cDNA, as in general, promoters are not themselves transcribed. Therefore, Heim cannot anticipate or render the claims obvious.

In addition, sucrose phosphate synthase is a completely different protein than SBP. Therefore, Heim cannot anticipate the claims nor cannot it support a presumption of obviousness over completely unrelated sequences.


Similarly, Grimes only provides the coding sequence (cDNA) of a sucrose-binding protein from soybean. There is no disclosure of a promoter sequence in the article. In addition, Grimes uses soybean, which is in the genus *Glycine* (specifically *Glycine max*). This is not identical or even substantially related to the *Vicia faba*.

In sum, the SBP promoter as disclosed and claimed herein clearly defines a contribution over Heim and Grimes. The references, either individually or in combination, do not remotely approximate the SBP promoter sequence.

Accordingly, withdrawal of the restriction requirement is proper, and earnestly requested.

Respectfully Submitted,

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